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# COMMONWEALTH of VIRGINIA

W. Tayloe Murphy, Jr.  
Secretary of Natural Resources

## DEPARTMENT OF ENVIRONMENTAL QUALITY

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Robert G. Burnely  
Director

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### WATER CONTROL BOARD ENFORCEMENT ACTION SPECIAL ORDER BY CONSENT ISSUED TO TOWN OF ABINGDON WOLF CREEK WATER RECLAMATION FACILITY VA0026531

#### **SECTION A: Purpose**

This is a Consent Special Order issued under the authority of Va. Code §§ 62.1-44.15 (8a) and (8d), between the State Water Control Board and the Town of Abingdon, for the purpose of resolving certain violations of environmental law and regulations.

#### **SECTION B: Definitions**

Unless the context clearly indicates otherwise, the following words and terms have the meanings assigned to them below:

1. "Code" means the Code of Virginia (1950), as amended.
2. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia as described in Code §§ 10.1-1184 and 62.1-44.7.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality.
5. "SWRO" means the Southwest Regional Office of the Department.
6. "Order" means this document, also known as a consent special order.
7. "Town" means the Town of Abingdon.

8. "Facility" means the Wolf Creek Water Reclamation Facility located at 21436 Vance Mill Road, Abingdon, VA.

### **SECTION C: Findings of Facts and Conclusions of Law**

1. The Town owns and operates the Facility and associated collection lines pursuant to VPDES permit VA0026531 (Permit) which was issued on September 21, 2003 and which expires on September 20, 2008. The Facility discharges to Wolf Creek in the Tenn-Big Sandy River Basin.
2. The SWRO issued a Notice of Violation (NOV) to the Town on June 4, 2004. The Discharge Monitoring Report (DMR) submitted for April 2004 reported the Chlorine Total Final effluent figure of 0.062 MG/L for Concentration Average and 0.066 MG/L for Concentration Maximum. The limits in the Permit are 0.017 MG/L for Concentration Average and 0.021 MG/L for Concentration Maximum.

During the period November 2002 through April 2004 (18 months), the Facility has reported 13 overflows.

3. On April 14, 2004 a NOV was issued to the Town by the SWRO. The Facility operator reported a sludge spill on March 26, 2004 resulting from operator error. According to a letter received from the Town on April 2, 2004, the operator switched the discharge valve on the digester re-circulation pump from the mixing position to the transfer position and as a result overfilled the secondary digester. A portion of the sludge discharged to Wolf Creek.

Three other incidents of unusual discharges have been reported to the SWRO by the Town. On April 14, 2003 the Facility had a loss of solids from the effluent due to high flows from heavy rainfall. On November 30, 2003 an excessive solids build-up in the secondary clarifier and the #1 chlorine contact tank resulted in the discharge of solids from the effluent. On January 11, 2004 the new sulfur dioxide feed system failed to automatically switch to a full tank when the feed tank was empty resulting in the discharge for about 13 hours of effluent which had not been dechlorinated.

The DMR submitted for March 2004 reports the Chlorine Technical Minimum figure of 0.58 MG/L and the limit contained in the Permit is 0.60 MG/L.

4. Warning Letters were issued to the Town for effluent limit overages during the months of August 2003, October 2003, December 2003, January 2004, and February 2004. The apparent violations were of the Chlorine Technical Maximum effluent limit, the Total Chlorine effluent limit and the Chlorine Technical Minimum effluent limit.

5. The Permit, Part II, Section Q (Proper Operation and Maintenance) states that the permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit.

The sludge spill on March 26, 2004 was the result of improper operation of the plant equipment.

6. Virginia Code § 62.1-44.5.A1 and Board regulation 9 VAC 25-31-50A state that except in compliance with a certificate issued by the board, it shall be unlawful for any person to discharge into state waters sewage, industrial waste, other wastes, or any noxious or deleterious substances.

The Town's VPDES permit does not authorize overflows and effluent limit exceedances.

7. The Town and DEQ met on April 29, 2004 to resolve the Facility's compliance issues.

#### **SECTION D: Agreement and Order**

Accordingly the Board, by virtue of the authority granted it pursuant to Va. Code § 62.4-44.15 and upon consideration of Va. Code § 10.1-1186.2, orders the Town, and the Town agrees, to perform the actions described below and in Appendix A and B of this Order. In addition, the Board orders the Town, and the Town voluntarily agrees to pay a civil charge of **\$6,000** in settlement of the violations cited in this Order.

1. The Town shall pay \$1,500 of the civil charge within 30 days of the effective date of this Order. Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia" delivered to:

Receipts Control  
Department of Environmental Quality  
Post Office Box 10150  
Richmond, Virginia

The payment shall include the Town's Federal ID number.

2. The Town shall satisfy \$4,500 of the civil charge upon completing the Supplemental Environmental Project (SEP) described in Appendix B of this Order.
3. The net cost of the SEP to the Town shall not be less than the amount set forth in Paragraph D.2. If it is, the Town shall pay the remaining amount in accordance with Paragraph D.1 of this Order, unless otherwise agreed to by the Department. "Net

costs” means the costs of the project minus any tax savings, grants and first-year operating cost reductions or other efficiencies.

4. By signing this Order the Town certifies that it has not commenced performance of the SEP before DEQ identified the violations in this Order and approved the SEP.
5. The Town acknowledges that it is solely responsible for completing the SEP project. Any transfer of funds, tasks, or otherwise by the Town to a third party, shall not relieve the Town of its responsibility to complete the SEP as contained in this Order.
6. In the event it publicizes the SEP or the SEP results, the Town shall state in a prominent manner that the project is part of a settlement for an enforcement action.
7. The Department has the sole discretion to:
  - a. Authorize any alternate SEP proposed by the Facility; and
  - b. Determine whether the SEP, or alternate SEP, has been completed in a satisfactory manner.
8. Should the Department determine that the Town has not completed the SEP, or alternate SEP, in a satisfactory manner, the Department shall so notify the Town in writing. Within 30 days of being notified, the Town shall pay the amount specified in Paragraph 2 above as provided in Paragraph 1 above.

#### **SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend the Order with the consent of the Town, for good cause shown by the Town or on its own motion after notice and opportunity to be heard.
2. This Order addresses only those violations specifically identified herein. This Order shall not preclude the Board or Director from taking any action authorized by law, including, but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility as may be authorized by law; and/or (3) taking subsequent action to enforce the terms of this Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.
3. For purposes of this Order and subsequent actions with respect to this Order, the Town admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.

4. The Town declares it has received fair and due process under the Administrative Process Act, Code § 2.2-4000 *et seq.*, and the State Water Control Law, and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.
5. Failure by the Town to comply with any of the terms of this Order shall constitute a violation of an Order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations.
6. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
7. The Town shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other act of God, war, strike, or such other occurrence. The Town must show that such circumstances resulting in noncompliance were beyond its control and not due to a lack of good faith or diligence on its part. The Town shall notify the Director and the Director of the SWRO in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of this Order. Such notice shall set forth:
  - a. the reasons for the delay or noncompliance;
  - b. the projected duration of such delay or noncompliance;
  - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
  - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

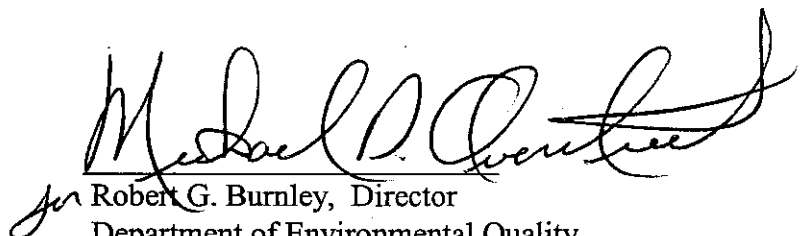
Failure to notify by phone the Director and the Director of the SWRO within 24 hours of learning of any condition listed above, which the Town intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim of inability to comply with a requirement of this Order.

8. This Order is binding on the parties hereto, their successors in interest, designees, and assigns, jointly and severally.
9. This Order shall become effective upon execution by both the Director or his designee and the Town. Notwithstanding the foregoing, the Town agrees to be bound by any

compliance date which precedes the effective date of this Order.

10. This Order shall continue in effect until the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to the Town. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve the Town from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.
11. The Town consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
12. By its signature below, the Town voluntarily agrees to the issuance of this Order.

Date: December 8, 2004

  
for Robert G. Burnley, Director  
Department of Environmental Quality

Town of Abingdon

By: *M. M. Newman*  
(Name)

Date: *10/12/04*

State of Virginia  
Town City/County of *Abingdon*

The foregoing instrument was acknowledged before me this *10/12/04* by  
( date )

*M. M. Newman* *Town Manager* of the Town of Abingdon on behalf of  
(name) (title)

the Town.

*10/12/04*  
Date

*Linda E. Wilson*  
Notary Public

My commission expires:

*April 30, 2005*

## APPENDIX A

In order to comply with the provisions of the State Water Control Law and Regulations, the Town agrees to implement the following actions by the dates noted below:

1. Complete interim improvements to existing facility. October 31, 2004
  - Flush lines installed on current digester overflow pipe.
  - Secure sludge transfer valve to control access.
  - Install valve indicator to readily determine valve setting.
  - Install high level alarms interlocked with the pump number P60, P70, P80, and P90 located in the digester building.
  - Add an unvalved overflow line to the primary and secondary digester.
2. Begin construction of Upgraded Facility in accordance with the approved plans and specifications. October 1, 2005
3. Complete construction of Upgraded Facility. June 30, 2007
  - Hydraulic capacity increased to 4.95 MGD.
  - Improvements to headworks and flow equalization basin to improve the plant's wet weather capacity.
  - Addition of 2 new secondary clarifiers to enhance solids removal.
4. Operate the Facility in full compliance with the Permit. August 1, 2007
5. Beginning with the effective date of the Order and continuing through October 1, 2006 (see Appendix B), limit and monitor the discharge from the facility in accordance with the permit except that: 1) six (6) Chlorine Technical Minimum (parameter 213) analyses may be less than 0.6 mg/l; and 2) the Town shall meet a Total Chlorine (parameter 005) monthly average effluent limit of 0.10 mg/l and a weekly average effluent limit of 0.50 mg/l.
6. The Department acknowledges that during the period of construction the Town may experience additional violations of the same Permit conditions which necessitated the Facility upgrade. Accordingly, pending completion of construction, the Town will use its best efforts to maximize treatment of high flows at the Facility and minimize bypasses and overflows during the construction period.
7. During the period of upgrade, operate the existing chlorination/dechlorination system in an effective manner consistent with the Permit and the additional requirements of this Order with the goal of effective disinfection of the wastewater and minimization of the chlorine residual discharged to the stream.



8. Revert to the monthly reporting requirements of Part I of the Permit when the UV system, as referenced in Appendix B, replaces chlorination as the disinfecting method at the Facility.
9. Submit quarterly progress reports to the SWRO with the first report, for the reporting period of October 1 through December 31, due on January 15, 2005 and in the same manner continue to submit quarterly reports until the project is completed.
10. All reports submitted to the SWRO shall be mailed to the attention of Ruby Scott, Compliance Auditor, P.O. Box 1688, Abingdon, VA 24212.

## APPENDIX B

The Town shall perform the SEP identified below in the manner specified in this Appendix.

1. The SEP to be performed by the Town is to install and operate a UV disinfection system to replace the chlorination/dechlorination method presently being used at the Facility.
2. The SEP shall be completed by October 1, 2006.
3. The Town shall submit to the Department written verification of the final overall and net cost of the SEP in the form of a certified statement itemizing costs, invoices and proof of payment or similar documentation within 30 days of the project completion date. For the purpose of this submittal, net costs can be either the actual final net costs or the projected net costs if such projected net costs statement is accompanied by a CPA certification from the Town's Chief Financial Officer concerning the projected tax savings, grants or first-year operating cost reductions or other efficiencies.